CONSUMER ATTORNEYS OF CALIFORNIA
Seeking Justice for All

CAOC announces 2014 award finalists

Consumer Attorney and Street Fighter of the Year revealed Nov. 15

SACRAMENTO (Aug. 13, 2014) – Consumer Attorneys of California president John Feder today announced this year's finalists for the organization's two major member awards, Consumer Attorney of the Year and Street Fighter of the Year. The winners will be revealed at CAOC's Annual Installation and Awards Dinner Nov. 15, to be held in conjunction with the CAOC's 53rd Annual Convention at the Palace Hotel in San Francisco.

Consumer Attorney of the Year is awarded to a CAOC member or members who significantly advanced the rights or safety of California consumers by achieving a noteworthy result in a case. Eligibility for Street Fighter of the Year is limited to CAOC members who have practiced law for no more than ten years or work in a firm with no more than five attorneys. To be considered for either award the case must have finally resolved between May 15, 2013 and May 15, 2014, with no further legal work to occur, including appeals.

Here are the 2014 finalists:

CONSUMER ATTORNEY OF THE YEAR.

BUSHELL v. JPMORGAN CHASE BANK, N.A.
Jon L. Oldenburg

HOLDING A BANK ACCOUNTABLE FOR MISLEADING PROMISES

After Richard and Susan Bushell defaulted on mortgage payments owed to JPMorgan Chase Bank, they were offered a trial loan modification plan. They were told that if they qualified under the federal Home Affordable Mortgage Program (HAMP) and fully complied with all terms of the plan, Chase would permanently modify their loan. The Bushells made more than 20 payments and submitted all requested documents until, with no prior warning, they found a notice of trustee's sale posted on their front door. The Bushells sued for breach of contract and false promise, claiming they had fulfilled all the requirements to qualify for a permanent loan modification. A trial court rejected their suit, finding that the Bushells failed to allege they qualified for a modification under HAMP. But Oldenburg took the case to an appellate court that reversed that decision, ruling that under HAMP's explicit eligibility requirements, a lender must already have determined that the borrower qualifies for assistance before offering a trial modification. The Bushells then reached a settlement. This landmark decision has given powerful legal leverage to thousands of homeowners across California by holding banks accountable for promises or misleading statements made during a predatory modification process.

GJERSET v. ALLSTATE INSURANCE
Brian S. Kabateck and Evangeline Fisher Grossman

HELPING AN ELDERLY COUPLE EARN FAIR VALUE FOR THEIR HOME

A massive wildfire destroyed the home inhabited for 40 years by Ron Gjerset, a 84-year-old World War II veteran and Purple Heart recipient, and his wife Nancy. When the Gjersets turned to Allstate Insurance to help them rebuild, they encountered a company that cared more about its bottom line than assisting its customers. The Gjersets spent more than two years living in cramped hotel rooms with their cat and Ron's oxygen machine before their living expenses ran out and they had to leave California because they didn't have enough money to rebuild their home. Kabateck and Grossman presented compelling evidence that showed Allstate used inaccurate information about the home's square footage and misidentified the structure's characteristics, which caused the Allstate computer system to undervalue the house. An investigation by the California Department of Insurance found Allstate violated the law by denying the couple the amount they were owed because it miscalculated the limits for the property dwelling coverage. The lawyers used the financial elder abuse statute in the context of an insurance bad faith case, which is uncommon. A jury found Allstate committed fraud and oppression with malice, and a settlement was reached before punitive damages could be determined.

IN RE MEDICAL CAPITAL SECURITIES
Mark C. Molumphy, Jeff S. Westerman, Jordanna G. Thigpen, Wylie A. Aitken, Darren O'Leary Aitken, Derek G. Howard and Michael David Liberty

LARGEST PONZI SCHEME RECOVERY IN CALIFORNIA HISTORY

The class attorneys represented more than 8,000 investors – including seniors who invested their life savings – in Medical Capital (Medcap), a company that purported to purchase healthcare debts at a discount and promised profits from collections. Medcap reassured investors that their funds were overseen by two prominent banks, The Bank of New York Mellon and Wells Fargo. However, the banks released millions in investor funds to MedCap without proper paperwork, sometimes with blank forms. Medcap was a Ponzi scheme. After Medcap defaulted on payments to investors, the U.S. Securities and Exchange Commission (SEC) filed in federal court to seize Medcap and appoint a receiver. Simultaneously, the class sued the banks on a novel theory that investors were third-party beneficiaries of the trust contracts between Medcap and the banks. Since Medcap had no remaining employees and had ceased operations, counsel had to reconstruct Medcap's records to show the banks improperly released funds. After the receiver and SEC tried to secretly settle with the banks and terminate the investor case, class counsel convinced the court to quash the deal and later obtained settlements of more than twice what the receiver had been willing to settle for – the largest Ponzi recovery in California history.

KAISER ASD CASES
Scott C. Glovsky and Robert S. Gianelli

GAINING COVERAGE FOR TREATMENT OF AUTISTIC CHILDREN

The attorneys fought for the last six years to stop health insurance companies from systemically denying Applied Behavioral Analysis (ABA) and speech therapy for children with autism spectrum disorders (ASDs). ABA is the most effective treatment for children with ASDs, but since ABA is expensive, in 2008 no insurers in California covered ABA. There was no case law in America establishing that ABA was covered under any insurance policy. The attorneys filed class actions against Kaiser and Anthem Blue Cross, asserting that the denials violated the California Mental Health Parity Act. First, they defeated Kaiser's effort to compel arbitration. Then, after the trial court dismissed the class action, an appellate

court revived the case in a seminal unfair business practices published opinion. The case involved more than 230,000 pages of documents, dozens of depositions in multiple cities, more than 70 court appearances, more than 40 motions and two trips to the Court of Appeal. One month before trial, Kaiser agreed to stop systemically denying ABA and speech therapy to more than 45,000 children with ASDs and also agreed to pay millions of dollars for past claims and autism research at leading research centers.

McKNIGHT v. CATHOLIC HEALTHCARE WEST, ET AL.
Conal Doyle, Steven B. Stevens, Alejandro Blanco, Philip Michels and Jin N. Lew

IMPROVING SAFETY FOR NEUROSURGERY PATIENTS

Charlene McKnight, 48, became a permanent paraplegic after a botched spinal surgery during which her spinal cord function was monitored incorrectly. The supervising neurologist was unable to log on to the computer system to monitor the surgery as required. Instead of telling the surgeon, the two employees of a private practice neuromonitoring group tried to interpret the readings on their own, even though they were not qualified to do so. The attorneys argued, successfully, that neurodiagnostic technicians are not "health care providers" covered by the cap on compensation for injured patients established by the Medical Injury Compensation Reform Act of 1975 (MICRA), and the trial court's ruling in their favor withstood four motions to reconsider and a petition for writ of mandate. A Kern County jury found the technicians 80 percent at fault for McKnight's injuries and awarded damages that were not subject to the MICRA cap. The case settled while on appeal. This case has improved patient care in California by impressing upon medical providers the catastrophic consequences and enormous liability that ensues when corners are cut.

PEDOWITZ v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.
Mark T. Quigley, Ivan Puchalt and Christian T.F. Nickerson

SUPPORTING A PATIENT SAFETY WHISTLEBLOWER

Shortly after he was recruited to be chairman of UCLA's orthopedic surgery department, Dr. Robert Pedowitz reported conflicts of interest between faculty and outside industry, economic waste, kickbacks and other misconduct that he felt could potentially affect patient safety. Less than a year after becoming chairman, Dr. Pedowitz was forced out of the position and claimed his removal was directly motivated by his disclosures of improper governmental activities, which afforded him protection from retaliation under California's Whistleblower Protection Act. During the eight-week trial in which 67 witnesses testified, Dr. Pedowitz testified about one of the orthopedic surgeons receiving $250,000 in consulting fees from device maker Medtronic and testified about writing memos to university officials about recurrent conflicts of interest and unethical activities by other doctors at the medical school. The attorneys argued UCLA turned a blind eye to the conflict of interest because the university profited from the success of medical products developed by its doctors. Moments before closing arguments the university agreed to pay a settlement plus issue a written apology to Dr. Pedowitz. The case is raising new concerns that UCLA's financial ties to medical device manufacturers may compromise patient care.

SOLORIO v. LINCOLN COMPOSITES, ET AL.
Brian J. Panish, Deborah S. Chang, Gregory L. Bentley and Gregory R. Vanni

PROVING FLAWS AND IMPROVING SAFETY IN COMPRESSED NATURAL GAS TANKS

Following the end of the Cold War, defense manufacturers, seeking new markets and incentivized by the United States' desire to reduce foreign oil dependence, rushed to place compressed natural gas (CNG) vessels into vehicles on our roadways. On March 16, 2009, Israel Solorio suffered a right leg amputation

and severe injuries after two all-plastic CNG vessels in a van exploded while being filled. The catastrophic ruptures occurring within the vessels' service life called into question the safety of the existing standards and the design, manufacturing, and testing processes for these all-plastic vessels in CNG vehicles and in future hydrogen vehicles. The case brought national attention to the issue of regulations and safety — and an investigation was launched by the National Highway Traffic Safety Administration (NHTSA) and NASA's White Sands Testing Facility. The handling attorneys conducted their own testing and analysis through experts from Lawrence Livermore National Laboratory, the Aerospace Corporation and others. The attorneys also provided funding for the investigation in the interest of public safety, at a cost of nearly $2 million. The matter settled for a confidential amount and created an unprecedented database for NHTSA and NASA that identifies the conditions and flaws that lead to failure and can be used to save lives in the future.

STATE OF CALIFORNIA EX REL. ROCKVILLE RECOVERY ASSOCIATES v. MULTIPLAN, INC., SUTTER HEALTH, ET AL.
Robert J. Nelson, William Bernstein, Kristen L. Sagafi and Nimish R. Desai

This case sought to protect the public, whose ever-increasing insurance premiums are linked to runaway hospital charges. Sutter Health billed surgery patients at its 26 hospitals on a time basis for "anesthesia services," even though it was already billing on a time basis for use of the operating room, while the anesthesiologist was billing separately for professional services over the same time period. Rockville Recovery Associates filed a whistleblower suit, with California Insurance Commissioner Dave Jones later intervening, under the Insurance Frauds Prevention Act, which imposes civil penalties payable to the state for false claims submitted to private insurers. The attorneys challenged the fee for "anesthesia services" as either a charge for a service not rendered or a duplication of one of the other charges, as Sutter could not identify a distinct service it provided during the billed time period. A week before trial, Sutter agreed to pay the state a $46 million penalty and enact a comprehensive series of billing and transparency reforms, which Jones called "a groundbreaking step in opening up hospital billing to public scrutiny." The attorneys worked closely with the Department of Insurance's legal team, including Gene Woo, Antonio Celaya, Richard Krenz and Adam Cole.

STREET FIGHTER OF THE YEAR

ARCE v. CHILDREN'S HOSPITAL OF LOS ANGELES
Shawn A. McMillan and Stephen D. Daner

PROTECTING PARENTS FROM UNWARRANTED CHILD SEIZURES

Jacqueline Arce's 11-month-old son was taken to Children's Hospital Los Angeles from daycare with signs of Shaken Baby Syndrome. Police investigators suspected the daycare owner had abused the boy and charged her with aggravated assault. But hospital employees tried to convince police officers that Arce and the boy's father were the abusers, and the Los Angeles County Department of Children and Family Services took both the infant and his three-year-old brother from the parents. A juvenile court cleared the parents and ordered the children returned. The trial court dismissed Arce's lawsuit for the unwarranted seizure of her children, based on the legal immunity of the hospital employees, but an appellate court ruled that legal immunity under California law for certain mandated reporters of child abuse no longer applies to anyone who files a bad faith report of suspected abuse. Previously in state courts professionals who made false reports of child abuse were held absolutely immune from being sued

for bad faith conduct. In addition, the court of appeal held that government officials may not seize children from their homes without first obtaining a warrant, even when the child has suffered serious injuries at the hands of an unknown perpetrator. McMillan and Daner won a settlement for the parents.

BACKLUND v. STONE AND ELITE IMAGING CONCEPTS, LLC
F. Edie Mermelstein

WINNING JUSTICE FOR A VICTIM OF CYBERBULLYING

Christopher Stone, an aspiring attorney and operator of websites preying on teenage girls as a source of twisted entertainment and revenue, posted a lewd photograph of a minor engaged in sexual conduct, falsely identified as Alyssa Backlund. Backlund received hundreds of messages expressing disgust over the photo. Stone, who did not know Backlund, obtained a compromising photo of her and publicly threatened to distribute it "all over the place." After Stone appeared on a Fox broadcast posing as an internet vigilante/expert commentator on "sextortion," Backlund was approached by an investigative reporter regarding Stone's public threat. Fearing further cyberbullying, Backlund used a pseudonym in talking to the reporter. Stone filed a small claims action for defamation, and Mermelstein filed a civil suit against Stone for abuse of process among other claims, relating the small claims action so Backlund would not be left to defend herself. Numerous motions were filed and Mermelstein appealed one of the rulings. The appellate court reversed and found "Stone's Internet activities are abusive, unethical, demonstrate a manifest lack of maturity, discretion and good judgment." Mermelstein won a financial judgment for Backlund as well as injunctive relief prohibiting Stone from posting defamatory statements for profit on his commercially operated websites.

RANNELLS v. SHARP HEALTH CARE, ET AL.
Charles S. Roseman and Richard D. Prager

IMPROVING ACCESS TO HEALTH CARE FOR DEAF PATIENTS

Melissa Rannells, who has been deaf since childhood, went to the Sharp Chula Vista Medical Center ER suffering abdominal pain. She asked for a qualified American Sign Language interpreter, which the hospital was legally obliged to provide at its expense. Every day she was informed by hospital staff that they would get an interpreter for her that day, but no interpreter was provided until she was given her discharge instructions, six days after admission. Melissa claimed that as a result of not having an interpreter, she was denied informed consent and was given inappropriate treatment that prolonged her hospitalization and caused her to suffer injuries. In her lawsuit that took more than five years to resolve, Melissa and her attorneys rejected several monetary settlement offers in order to achieve a comprehensive system-wide settlement effecting sweeping policy changes. Sharp initiated procedures to ensure that a sign language interpreter is provided to every deaf person when needed. Also, any deaf person who now arrives at a Sharp ER or hospital will have immediate access to cutting-edge iPad or similar technology to remotely communicate with sign language interpreters, allowing the deaf to instantaneously and effectively communicate with health care providers.

YOUNG v. HORIZON WEST, INC.
Kathryn Stebner, Kirsten M. Fish and Valerie McGinty

DEFEATING UNJUST NURSING HOME ARBITRATION CLAUSES

Marilyn Young, 88, was recovering from a stroke at a Horizon West skilled nursing facility in Monterey when she was sexually assaulted and contracted genital herpes. When Young sued, Horizon West moved to force the case to arbitration based on an agreement that her daughter had signed upon admission. Fish

and Stebner defeated that motion, and when Horizon West appealed, a process that usually takes upwards of two years, McGinty utilized a little-known strategy and was able to speed up the process based on Young's age. As a result Young was still alive when the court issued its decision in her favor, and the case was settled shortly afterwards. The appeal produced a published decision that clarified what had been a murky area: the ability of an agent (such as Young's daughter) to bind a principal (such as Young) to an arbitration agreement. Because this case presented a perfect example of how dangerous arbitration agreements can be in nursing home contracts, Stebner and Fish worked with California Advocates for Nursing Home Reform to write and produce a public service announcement video featuring Young and her daughter. The video urges the elderly and their families to refuse to agree to arbitration provisions when entering a nursing home and will help other California seniors avoid lengthy legal battles regarding nursing home arbitration agreements.

ZULFER v. PLAYBOY ENTERPRISES INC., ET AL.
David M. deRubertis, Mindy J. Lees and Martin I. Aarons

UPHOLDING PROTECTIONS OF THE SARBANES-OXLEY ACT

Soon after Catherine Zulfer was promoted to senior vice president and corporate controller of Playboy Enterprises, the company's chief financial officer asked her to accrue $1.1 million in executive bonuses. Zulfer refused, saying she needed the board of directors' approval to do so, and claimed she was improperly pressured to make the accrual in violation of Sarbanes-Oxley-Act-required internal accounting controls. Zulfer said her objection to making the accrual was "protected activity" under Sarbanes-Oxley, and said soon afterward the CFO engaged in an illegal series of retaliatory actions against her and began to devise a plan to fire her, which he did seven months later. Playboy asserted that a report of an attempted violation of internal controls could not qualify as Sarbanes-Oxley-protected activity, and no federal appellate decision had ever approved such a claim. But a federal judge agreed that a report of an attempted violation of internal controls could indeed give rise to protection under Sarbanes-Oxley, and a jury unanimously found Playboy had retaliated against Zulfer in violation of Sarbanes-Oxley. The verdict brought national attention to the risk that corporations take when they retaliate against corporate insiders who report financial or accounting concerns.

Consumer Attorneys of California is a professional organization of plaintiffs' attorneys representing consumers seeking accountability against wrongdoers in cases involving personal injury, product liability, environmental degradation and other causes.

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